

MINUTES OF VIRTUAL / CONFERENCE CALL MEETING
MAPLE RIVER WATER RESOURCE DISTRICT
ORIGINATING AT THE CASS COUNTY HIGHWAY DEPARTMENT
WEST FARGO, NORTH DAKOTA
HERITAGE CONFERENCE ROOM
AUGUST 1, 2024
8:00 A.M.

A virtual / conference call meeting of the Maple River Water Resource District was held on August 1, 2024, at 8:00 a.m.

Present were Rodger Olson, Chairman; Gerald Melvin, Manager; Chad Miller, Manager; Melissa Hinkemeyer, Director, Secretary; Leilei Bao, Treasurer; Carolyn Fiechtner, Administrative Assistant; Sean M. Fredricks and David C. Piper, Ohnstad Twichell, P.C.; Kurt Lysne, Alexa Ducioame, and Levi Hanson, Moore Engineering, Inc.; Mike Opat, Houston Engineering, Inc.; Duane Breitling, Cass County Commissioner; Kyle Litchy, Cass County Highway Department; Randy Laufenberg, Clifton Township Board of Township Supervisors; Jan Jenks, Bill Lemna, and Terry Freehauf, Clifton Township property owners; Sidney Steinweg, Davenport Township property owner; and Lynn Utke, Highland Township property owner.

Approval of agenda

It was moved by Manager Melvin, seconded by Chairman Olson, and unanimously carried to approve the order of the agenda, as amended. Manager Miller was absent for the vote.

Minutes

It was moved by Manager Melvin and seconded by Chairman Olson to approve the minutes of the July 1, and 15, 2024, meetings, as presented. Upon roll call vote, the motion carried unanimously. Manager Miller was absent for the vote.

Manager Miller joined the meeting at this time.

Complaint for Water-Related Issues from Jan Jenks against Wadeson PTP LLLP for unpermitted drainage in the S 1/2 of Section 28 in Clifton Township

The Board heard comments and concerns from Clifton Township Chairman Randy Laufenberg and Clifton Township property owners: Jan Jenks, Bill Lemna, and Terry Freehauf regarding the *Complaint for Water-Related Issues* against Wadeson PTP LLLP for unpermitted drainage in the S 1/2 of Section 28 in Clifton Township.

Sean Fredricks discussed *Subsurface Water Management Permit No. 202412* for Jeff Wadeson in regard to the *Complaint* and current legislation regarding subsurface water management systems.

It is unclear whether the *Complaint* is in regard to surface or subsurface drainage. Following discussion, the Board recommended the property owners, Mr. Wadson, and Clifton Township have a meeting to discuss the property owners' and Township's concerns and negotiate a resolution. If there is no resolution, the Board will act on the *Complaint* at a future meeting.

Drain #34 Channel Improvement Project No. 2022-01

Kurt Lysne reported right of way acquisition is complete for the Drain #34 Channel Improvement Project No. 2022-01. The project is on hold until the financing for the project is established.

Drain #37 Improvement Project No. 2022-01 - extension of Surface Drain Permit No. 6070

The Board approved *Surface Drain Permit No. 6070* regarding Cass County Drain #37 Improvement Project No. 2022-01 at the District's meeting on October 6, 2022.

Section 89-02-01-09.11 of the North Dakota Administrative Code includes a two-year deadline on all surface drain permits. However, Section 89-02-01-09.12 of the North Dakota Administrative Code allows water resource districts to grant up to two one-year extensions. *Surface Drain Permit No. 6070* is set to expire this October. The Board is still in the process of acquiring right of way for the project and, while the Board anticipates completing those acquisitions in the near future, the Board has determined a permit extension will be necessary.

Manager Miller moved to approve a one-year extension of *Surface Drain Permit No. 6070*, and to authorize the Secretary to provide notice of the extension to the North Dakota Department of Water Resources (NDDWR). Manager Melvin seconded the motion. Upon roll call vote, the motion carried unanimously.

Drain #39 Improvement Project No. 2023-01

Mr. Lysne updated the Board on the Drain #39 Improvement Project No. 2023-01, including discussions on a driveway crossing related to the project. Moore Engineering, Inc. will continue project discussions with adjacent property owners and will update the cost estimate for the project to bring to a future meeting.

Drain #46 – bridge cleanout in Sections 21 and 28 of Rochester Township

Mr. Lysne reported Maple River Excavating LLC will be completing the Drain #46 bridge cleanout in Sections 21 and 28 of Rochester Township, however the weather has delayed the project.

Lynchburg-Buffalo Project No. 2023-01

Mr. Lysne updated the Board on the status of the Lynchburg-Buffalo Project No. 2023-01 and stated Moore Engineering, Inc. continues to work on the project design and permitting.

Cornell Township Drainage Improvement District No. 80

Mr. Lysne reported the petition is being updated for Cornell Township Drainage

Improvement District No. 80 to reflect the petitioners' finalized preferred design alternative. The petitioners will need to submit the updated petition before the Board continues with the process to establish the assessment district for the project.

Sean Fredricks reminded the Board that the draft *Joint Water Resource District Agreement* with Barnes County Water Resource District has been distributed for the Board to review.

Drain #46 – Cass County Highway Department upcoming crossing replacements

Kyle Litchy said to the Board that two crossings on Drain #46, between Sections 10 and 15 and Sections 15 and 22 both in Cornell Township, will be under construction this fall. The timeline has been revised for these projects; these projects were originally planned for 2026 construction. The Board briefly discussed the cost estimates for the projects.

Davenport Flood Risk Reduction Project

Mr. Lysne reported Moore Engineering, Inc. continues to work with Burlington Northern Santa Fe Railway Company and Red River Valley & Western Railroad Company regarding an agreement related to operation and maintenance of the Davenport Flood Risk Reduction Project.

Levi Hanson briefly updated the Board on the status of right of way acquisition for the project. Sidney Steinweg provided comments regarding right of way negotiations for the project. Mr. Steinweg inquired on the sizing of the drainage ditch on the exterior of the levee for the project. Alexa Ducioame addressed Mr. Steinweg's question and stated the existing berm will be redesigned to allow more capacity, however overland flooding that has occurred on the property in the past will still occur post-project.

Brief discussion was held on the project timeline. The project is anticipated to be constructed in 2025.

Regional Conservation Partnership Program – Upper Maple River Watershed

Mr. Lysne updated the Board on the RCPP – Upper Maple River Watershed Plan. The Natural Resources Conservation Service (NRCS) is planning an agency tour for August 29, 2024.

Low head dam hazard mitigation project

Discussion was held regarding the low head dam hazard mitigation project in Maple River Water Resource District. Mr. Lysne stated that additional work will not be done on the project until cost-share requests to the State Water Commission and to the Cass County Flood Sales Tax Committee have been submitted and approved, and the Board decides to proceed with the project. Mr. Lysne will work with the Secretary to submit the respective cost-share applications.

2024 facility inspections

Mr. Lysne provided the 2024 Maple River Water Resource District facility inspections report to the Board. The Board will hold a special meeting on August 16, 2024, at 8:00

a.m. to discuss the report and potential repairs needed.

Bills

It was moved by Manager Melvin and seconded by Manager Miller to approve the payment of Checks #6183 through #6189, the wire transfers, and electronic funds transfers, as presented. Upon roll call vote, the motion carried unanimously.

Subsurface Water Management Permit No. 20249

Lynn Utke had questions for the Board regarding *Subsurface Water Management Permit No. 20249*. The Board discussed the matter with Mr. Utke. Chairman Olson thanked Mr. Utke for attending and addressing the Board.

Application to Construct or Modify a Dike No. 2755 for Harold Miller in the NW 1/4 of Section 9 in Cornell Township

The Board discussed *Application to Construct or Modify a Dike No. 2755* for Harold Miller in the NW 1/4 of Section 9 in Cornell Township. The NDDWR submitted the application to the Board for review; the Board does not have jurisdiction over the application but can submit comments to the NDDWR. Harold Miller is Manager Chad Miller's dad. Sean Fredricks explained the conflict analysis the Board should conduct regarding Manager Miller's potential conflict in the matter. Section 44-04-22 of the North Dakota Century Code provides the relevant standard. That statute provides:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

The Section 44-04-22 test requires a multi-step analysis. In this case, Mr. Fredricks concluded Manager Miller does, in fact, have a direct and substantial personal interest in the matter that creates a technical conflict. Manager Melvin moved to conclude that Manager Miller has a conflict and should not participate in any votes regarding this application. Chairman Olson seconded the motion. Upon roll call vote, Chairman Olson and Manager Melvin voted in favor of the motion. Manager Miller abstained. The motion carried.

There is an additional conflict statute specific to water resource districts, Section 61-16-08.1 of the Century Code, that provides the County Commission with discretionary authority to appoint alternate water managers if a full-time member has a conflict. However, that statute was effectively superseded by Section 44-04-22 when the Legislature adopted Section 44-04-22 in 1995 (Section 61-16-08.1 went into effect in 1985). Section 61-16-08.1 does not provide a definition for what qualifies as a "conflict of interest" and does not provide a mandatory process; rather, the legislative history of Section 61-16-08.1 indicates the Legislature approved that statute to provide a process for water managers to avoid situations where they are not comfortable voting on a matter

and is not a mandatory process. Conversely, the process under Section 44-04-22 is mandatory for conflict situations, provides a detailed test for determining if a conflict exists, and provides a detailed process for a Board to proceed even if a conflict does exist. The Legislature enacted Section 44-04-22 after passing the vague and optional Section 61-16-08.1 and, therefore, the process under Section 44-04-22 controls all conflict matters.

With the conflict matter concluded, the Board proceeded with discussion of Mr. Harold Miller's application.

The Board is required to consider *Application to Construct or Modify a Dike No. 2755* for Harold Miller in the NW 1/4 of Section 9 in Cornell Township within 45 days of receipt and suggest any changes, conditions, or modifications to the NDDWR.

After discussion, Manager Melvin moved to authorize the Secretary to submit to the NDDWR that the Board has no comment regarding *Application to Construct or Modify a Dike No. 2755* for Harold Miller in the NW 1/4 of Section 9 in Cornell Township. Chairman Olson seconded the motion. Upon roll call vote, Chairman Olson and Manager Melvin voted in favor of the motion. Manager Miller abstained. The motion carried.

Application to Install a Subsurface Water Management System No. 202415 for Mark Ottis in the N 1/2 of the N 1/2 of Section 33 in Addison Township

The Board next reviewed *Application to Install a Subsurface Water Management System No. 202415*, filed July 30, 2024, by Applicant Mark Ottis. Under the Application, Applicant seeks to install a 151-acre drain tile system in the N 1/2 of the N 1/2 of Section 33 in Addison Township, Cass County, North Dakota. The project will include a single gravity outlet located in the northeast corner of the NE 1/4 of Section 33; the outlet will discharge directly into Cass County Drain No. 37, a legal assessment drain owned and operated by the Maple River Water Resource District.

According to records submitted by Applicant, Mark and Joan Ottis own the N 1/2 of the N 1/2 of Section 33 in Addison Township. Because the project will discharge directly into a legal assessment drain, no downstream notices are required under N.D. Cent. Code § 61-32-03.1.

Manager Melvin moved, and Manager Miller seconded the motion, to approve *Application to Install a Subsurface Water Management System No. 202415*, filed July 30, 2024, for Mark Ottis regarding a proposed tile system in the N 1/2 of the N 1/2 of Section 33 in Addison Township; and to authorize the Secretary to sign *Subsurface Water Management Permit No. 202415*, subject to the following conditions:

1. Applicant will install and maintain erosion protection at any and all outlets into Cass County Drain No. 37.
2. Applicant will re-establish any areas disturbed installing or maintaining Applicant's tile system.

3. Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines Cass Rural Water Users District has in the N 1/2 of the N 1/2 of Section 33 in Addison Township under any blanket easements, or otherwise beyond the Water District's existing easement(s).
4. Applicant must apply for an amendment to *Subsurface Water Management Permit No. 202415* in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system.

Upon roll call vote, the motion carried unanimously.

Under Section 61-32-03.1, the Board cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the Board recommends that Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

The Board will provide copies of the Board's *Notice of Decision, Subsurface Water Management Permit No. 202415*, and Applicant's downstream flow map to the NDDWR and Cass Rural Water Users District. Applicant's detailed project design map is an exempt record, and the Board will not provide copies to any third parties.

Tree removal on Water Resource District facilities

The Board briefly discussed tree grinding and removal on Maple River Water Resource District facilities. The cost estimate from the contractor for the project will be distributed to the Board for review. After discussion, the Board directed the Secretary to add this item to the special Maple River Water Resource District meeting agenda for August 16, 2024, to continue discussion on the matter.

Upper Swan Creek Channel Improvement Project No. 2020-01

Mr. Lysne reported vegetation has been established and the Upper Swan Creek Channel Improvement Project No. 2020-01 is now complete.

A motion was made by Manager Melvin and seconded by Manager Miller to approve and authorize the Chairman to sign *Final Balancing Change Order No. 2* for R.J. Zavoral and Sons, Inc. to decrease the total contract price in the amount of \$204,967.20 for Upper Swan Creek Channel Improvement Project No. 2020-01. Upon roll call vote, the motion carried unanimously.

It was moved by Manager Miller and seconded by Manager Melvin to approve and authorize the Chairman to sign *Contractor's Application for Payment No. 4 – Final* for R.J. Zavoral and Sons, Inc. in the amount of \$23,070.60 regarding the Upper Swan Creek Channel Improvement Project No. 2020-01 and to authorize the Secretary to de-obligate any remaining State Water Commission cost-share funds for the project. Upon roll call

vote, the motion carried unanimously.

Adjournment

There being no further business to be considered by the Board, Manager Melvin motioned, and Manager Miller seconded to adjourn the meeting. The meeting adjourned without objection.

APPROVED:

Rodger Olson
Chairman

ATTEST:

Melissa Hinkemeyer
Secretary